

David L. Mazaroli
Attorney for Plaintiff
11 Park Place – Suite 1214
New York, NY 10007-2801
Tel. (212)267-8480
Fax. (212)732-7352
e-mail: dlm@mazarolilaw.com

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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INDEMNITY INSURANCE COMPANY OF :
NORTH AMERICA, : **ECF CASE**
:
Plaintiff, : 11 Civ. 9036 (DLC)
:
- against - : **COMPLAINT**
:
CEVA OCEAN LINE; CEVA OCEAN LINE, :
INC.; CEVA LOGISTICS; CEVA FREIGHT :
GERMANY GMBH; CEVA FREIGHT :
MANAGEMENT; CEVA FREIGHT LLC; :
MEDITERRANEAN SHIPPING CO. S.A.; *in* :
personam; M/V “MSC STELLA”, her engines, :
tackle, boilers, etc. *in rem*, :
Defendants.

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Plaintiff, through its undersigned attorney, alleges as follows for its complaint against defendants:

1. This action involves admiralty and maritime claims within the meaning of Rule 9(h) with respect to the carriage of the subject cargo by sea and with respect to multimodal carriage under through bills of lading involving substantial ocean carriage. This Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331 as this action arises from the carriage of goods in international and interstate commerce and is governed by federal statutes and federal common law related thereto. This action

also falls within the Court's pendent, ancillary, and supplemental jurisdiction as to the remaining aspects of the claim.

2. Plaintiff seeks recovery for cargo nondelivery, shortage and loss caused by defendants' breaches of contract and torts.

3. Plaintiff Indemnity Insurance Company of North America ("IINA") maintains an office and place of business at 140 Broadway, New York, New York, and sues herein as subrogated insurer of the cargo in suit, having paid the insurance claim of its insured Briggs & Stratton Corp. who was at all material times the owner of the cargo. Plaintiff also sues herein as assignee of Briggs & Stratton Corp. and in said capacity also seeks recovery of its insured's \$5,000.00 deductible interest in the claim in suit.

4. Defendants are believed to be corporations organized under the laws of, and with their principal places of business in, certain of the fifty states or foreign sovereigns.

5. Defendant Mediterranean Shipping Co. S.A. (hereinafter "MSC"), was at all material times a common carrier of cargo for hire and conducted business in said capacity with respect to multimodal shipments to, from, and through the State of New York, and the United States as a whole. MSC has a general agency office, and agent for service of process, within this district in care of Mediterranean Shipping Company (USA) Inc., 420 Fifth Avenue, New York, NY 10018.

6. The MSC bill of lading for the shipment in suit includes a forum selection clause which requires that claims and actions arising from shipments to or from the United States be brought in the **United States District Court for the Southern District of New York.**

7. Defendant Ceva Ocean Line, Inc., a non-vessel-operating common carrier, and the above-captioned Ceva co-defendants (collectively referred to herein as “Ceva”), were at all material times engaged in the business of providing services with respect to the multimodal common carriage of cargo for hire and conducted business in said capacity with respect to shipments to, from and through the State of New York. Ceva, individually and/or collectively, has a registered agent for service of process within this district in care of CT Corporation, 111 Eighth Ave., New York, New York 10011.

8. Upon information and belief the captioned vessel is now, or will be during the pendency of this action, within the admiralty and maritime jurisdiction of this Honorable Court or is otherwise subject to jurisdiction pursuant to Rule 4(k) (2) Federal Rules of Civil Procedure.

9. This action arises from the nondelivery, shortage, loss, and conversion to part of a shipment of 210 packages of lawn equipment and mowers which were delivered to defendants, or entities acting on their behalf, in good order and condition and complete as to quantity at or near Memphis, Tennessee.

10. The shipment is described in each of the bills of lading issued by or on behalf of the defendants’ as consisting of lawn equipment/mowers in 210 packages.

11. The shipment moved, or was intended to move, on a door-to-door basis in carrier-provided container TRLU5723632 from Dyersburg (and Memphis), Tennessee, to Vilshofen, Germany, with ocean carriage from Savannah to Bremerhaven aboard the M/V “MSC STELLA” (also referred to as MSC STEALLA) Voyage 019R, as described more fully in CEVA Ocean Line combined transport door-to-door bill of lading ATL114935380 dated on or about February 17, 2011, MSC Sea Waybill No.

MSCUT5026699 dated on or about February 20, 2011, and others. (CEVA No.: FM00071104349; MSC booking No. 038CHS288207; MSC Claim No. 2011-4219-192-3; 0000003248288).

11. When defendants, or entities acting on their behalf, tendered delivery at or near Vilshofen on or about March 14, 2011, 88 packages of lawn equipment and mowers were missing from the shipment.

12. Defendants have failed to deliver the missing cargo and have to date not explained the cause or circumstances which gave rise to the nondelivery thereof.

13. The aforesaid nondelivery, shortage, loss and conversion was caused by defendants' material deviations from, and fundamental breaches of, the governing carriage contracts.

14. As a result of the nondelivery, shortage, loss and conversion of the cargo plaintiff, and those on whose behalf it sues, sustained damages in the amount of \$45,761.00.

15. Defendants are liable to plaintiff, without limitation of any kind, as common carriers, bailees and/or warehousemen-for-hire for damages in the amount of \$45,761.00.

16. Plaintiff sues herein on its own behalf and as agent and trustee for and on behalf of anyone else who may now have or hereafter acquire an interest in this action.

WHEREFORE, plaintiff demands judgment against the captioned defendants jointly and severally in the amount of \$45,761.00 in addition to interest at the rate of 9% per annum and the costs of this action and requests that the Court issue its process against the aforesaid vessel in rem.

Dated: New York, New York
December 9, 2011

LAW OFFICES,
DAVID L. MAZAROLI

s/David L. Mazaroli

David L. Mazaroli
Attorney for Plaintiff
11 Park Place - Suite 1214
New York, New York 10007
Tel: (212)267-8480
Fax: (212)732-7352
E-mail: dlm@mazarolilaw.com
File: 1G-2125